

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants : Tushar Patel et al. Confirmation #2233
U.S. Patent Appl. 10/777,019 Art Unit : 3733
Filed : February 11, 2004 Examiner : D. C. Comstock
Title : Tissue Retractor and Guide Device

CERTIFICATE OF TRANSMISSION

I hereby certify that this correspondence is being electronically filed via EFS-Web to the Commissioner for Patents with the U.S. Patent and Trademark Office on:

Name (print/type)	Lisa Adams	
Signature		Date: Dec. 14, 2010

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COMMUNICATION REGARDING PATENT TERM ADJUSTMENT

Applicants reviewed the USPTO calculation of the patent term adjustment for the above-referenced patent and believe that the patent term adjustment of 518 days calculated for the A delay by the USPTO may be longer than appropriate. At least three errors were found in the PTA calculation.

First Error: A Non-Final Rejection was mailed May 7, 2007. A first Response was filed on July 26, 2007, and a second Response to Non-Compliant Amendment was filed on October 17, 2007. The Response to Non-Compliant Amendment should have resulted in a delay by the Applicant of 83 days, as calculated from August 7, 2007 (three months from the mailing date of the office action).

Second Error: A final office Action was mailed February 8, 2008, and an Amendment and Response to the final Office Action was filed on March 13, 2008. In the Advisory Action mailed April 4, 2008, the amendment after final was *not* entered. A Notice of Appeal was filed April 18,

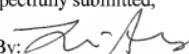
2008, and after a pre-appeal conference, the Examiner withdrew the final Office Action. A new, non-final Office Action was mailed on August 11, 2008. Since the final Office Action mailed February 8, 2008 was withdrawn, the USPTO should have mailed an Office Action no later than February 17, 2008, four months after the response filed on October 17, 2007. The Office Action was not mailed until August 11, 2008, 176 days late. The PTA was increased to account for a USPTO delay of 29 days, thus the PTA should be increased by an additional 147 days, for a total of 176 days to account for this delay by the USPTO.

Third Error: The IDS filed on February 17, 2010 was filed 121 days after the filing of a Request for Continued Examination on October 19, 2009. Thus, the PTA should be reduced by 121 days.

It is applicant's belief that the patent term determination of 518 days should be reduced by 83 days to account for the First Error noted above; increased by an additional 147 days to account for the Second Error noted above; and decreased by 121 days to account for the Third Error noted above. As a result, the correct patent term adjustment for the above-referenced patent should be 461 days, not 518 days.

Respectfully submitted,

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